



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R08-OW-2018-0724; FRL-9990-97-Region 8]

### **Approval of Transfer of the Authority to Implement and Enforce the North Dakota Pollutant Discharge Elimination System (NDPDES) Program from the North Dakota Department of Health (NDDOH) to the Newly Established North Dakota Department of Environmental Quality (NDDEQ)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final action.

**SUMMARY:** On March 29, 2019, the Administrator for the Environmental Protection Agency (EPA) approved the transfer of authority for the North Dakota Pollutant Discharge Elimination System (NDPDES) from the North Dakota Department of Health (NDDOH) program to their newly established North Dakota Department of Environmental Quality (NDDEQ). With this action, the EPA has retained the authority to issue NPDES permits for facilities located on tribal lands and/or discharging to tribal waters.

**DATES:** On March 29, 2019, the Administrator for the Environmental Protection Agency (EPA) approved the transfer of authority from the NDDOH to the NDDEQ.

**FOR FURTHER INFORMATION CONTACT:** VelRey Lozano, U.S. Environmental Protection Agency, Region 8, (8WP-CWW), 1595 Wynkoop Street, Denver, Colorado 80202-1129, 303-312-6128, email [lozano.velrey@epa.gov](mailto:lozano.velrey@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **General Information**

##### *A. Does this action apply to me?*

Entities potentially affected by this action are: The EPA; tribal programs; and the regulated community and citizens within the state of North Dakota. This table is not intended to be exhaustive; rather, it provides a guide for readers regarding entities that this action is likely to regulate.

**Table 1—Entities Potentially Affected by This Proposed Approval**

Category	Examples of potentially affected entities
State and Indian Tribal Governments	States and Indian Tribes that provide certification under section 401 of the Clean Water Act (CWA); States and Indian Tribes that own or operate treatment works.
Municipalities	POTWs required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
Industry	Facilities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
NPDES Stakeholders	Any party that may review and provide comments on NPDES permits.
Residents of the state of North Dakota	Any party that may review and provide comments on NPDES permits.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

*B. What action is EPA taking?*

The EPA is providing final notice of approval of the transfer of authority from the State of North Dakota's Department of Health (NDDOH) granting the North Dakota Department of Environmental Quality (NDDEQ) the authority to administer the NPDES program in North Dakota to regulate discharges of pollutants into waters of the United States under its jurisdiction. Concurrent with this approval, EPA is approving updated NPDES program revisions. With this action the EPA will retain the authority to issue NPDES permits for facilities located on tribal lands and/or discharging to tribal waters.

*C. What is EPA's authority for taking this action?*

Under 40 CFR 123.62(b) and 123.62(c), the CWA requires the EPA to approve substantial revisions to a state program. The EPA considers the change of state authority and updating of the NPDES program rules to be substantial and has therefore taken this action.

*Public Process:* EPA opened a 30-day public comment period that ended on November 29, 2018. One comment was received questioning the State's authority to properly implement the enforcement provisions under the CWA. The comment was determined to be beyond the scope of the state's transfer

of authority request. EPA provided response to the commenter and no change to the NDPDES program application was deemed necessary.

**Authority:** This action is taken under the authority of section 402 of the Clean Water Act as amended, 33 U.S.C. 1342. I hereby provide public notice of EPA's final action authorizing the State of North Dakota through the NDDEQ to administer the approval NDPDES program regulating discharges of pollutants to waters of the U.S. under its jurisdiction.

Dated: April 5, 2019.

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Debra Thomas,  
Acting Regional Administrator,  
EPA Region 8.

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